

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH
AND CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010101137

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On October 25, 2010, Student filed a Request for Due Process Hearing (complaint) against the Los Angeles County Office of Education (LACOE), Los Angeles County Department of Mental Health (LACDMH) and California Department of Education (CDE). On November 23, 2010, CDE filed a Motion to Dismiss itself as a party to the action, alleging that it is not a responsible educational agency.¹ On November 29, 2010, LACOE filed an opposition. Student and LACDMH did not file a response. CDE filed a reply brief on December 1, 2010.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has

¹ CDE’s motion raised two other grounds to dismiss Student’s complaint, which are not addressed in this order as CDE’s motion is granted on other grounds.

the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

If a dispute arises between the school district and the community mental health agency regarding the provision of related services or financial responsibility, either agency may submit a complaint to either the Secretary of Public Instruction or the Secretary of the California Health and Human Services Agency. If the dispute cannot be resolved informally, the parties will then proceed to a hearing before the OAH. (Gov. Code, § 7585.) Further, the school district and community mental health agency are to use the dispute resolution procedures in Government Code section 7585, if a dispute regarding the responsibility, including financial responsibility, of providing services ordered by OAH after a hearing or agreed upon by the parties in mediation, pursuant to Education Code sections 56503 and 56505. (Cal. Code Regs., tit. 2, § 60600, subd. (a) and (b).) Neither the school district nor the community mental health agency may request a due process hearing pursuant to Education Code section 56501 against another public agency. (Gov. Code, § 7586, subd. (d).)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution “if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

CDE seeks to be dismissed as a party as it asserts that it is not a public agency responsible for providing Student with special education services. In the complaint, Student alleges that CDE is an appropriate party because of its supervisory oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilities Education Act (IDEA) as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint contends that CDE is an appropriate party because LACDMH refusal to provide students with mental services because of the Governor’s October 8, 2010 veto of state funding to county mental health agencies to provide mental

health services for special education students pursuant to Government Code sections 7570, et seq. LACOE contends that CDE is an appropriate party because it is providing stopgap funding that permits LACDMH to provide Student with appropriate mental health services. Additionally, LACOE contends that CDE is an appropriate party because once Student leaves juvenile hall and attends the residential treatment center that LACOE will no longer be a responsible educational agency.

The complaint raises no claims against CDE that it denied Student a FAPE and seeks no remedies from CDE, other than for CDE to exercise its supervisory authority to ensure that Student receives a FAPE. Further the complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. While CDE has stepped in and provided interim funding to county mental agencies only through January 14, 2010, the issue regarding financial responsibility is outside the scope of this special education hearing. LACOE needs to exercise its rights pursuant to California Code of Regulations, title 2, section 60600, subdivision (b), to request a separate hearing before OAH to determine financial responsibility. Finally, neither Student in the complaint or LACOE in its opposition contend that Student is a parentless child for whom CDE might be the responsible educational agency. (*Orange County Dept. of Educ. v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170; *Student v. Los Angeles Unified Sch. Dist., Los Angeles County Ofc. of Educ., Los Angeles County Dept. of Mental Health, and California Dept. of Educ.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009100939.) Accordingly, CDE is not a necessary or proper party to the complaint, and its motion to dismiss as a party is granted.

ORDER

CDE's Motion to Dismiss itself as a party is granted. The matter will proceed as scheduled against the other remaining parties as presently scheduled.

Dated: December 7, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings